

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAMIL SHABAZZ, fka Garrett S. Brandon,	:	
Petitioner,	:	
v.	:	Case No. 3:19-cv-14
JIM HAVILAND, Warden, Allen/Oakwood Correctional Institution,	:	JUDGE WALTER H. RICE
Respondent.	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #5);
OVERRULING PETITIONER'S OBJECTIONS THERETO (DOC. #6);
DISMISSING PETITION WITH PREJUDICE; JUDGMENT TO ENTER
IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; DENYING
CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN*
FORMA PAUPERIS; TERMINATION ENTRY

Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz in his Report and Recommendations, Doc. #5, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filing in its entirety.

Petitioner's Objections thereto, Doc. #6, are OVERRULED. As Magistrate Judge Merz explained, AEDPA's statute of limitations *does* apply to Petitioner's claims, albeit with a one-year grace period. *Brown v. O'Dea*, 187 F.3d 572, 577 (6th Cir. 1999), *vacated and remanded on other grounds at* 530 U.S. 157 (2000).

Petitioner admits that he knew that Terrance Burgan had lied during the 1988 trial. He claims, however, that he could not prove it until Burgan recanted his testimony during a February 18, 2009, deposition. Even assuming that this was the date on which the factual predicate for the claim could have been discovered, 28 U.S.C. § 2244(d)(1)(D), Petitioner still waited ten years to file his application for a writ of habeas corpus. It is, therefore, untimely.

Accordingly, the Court DISMISSES the Petition WITH PREJUDICE.

Judgment shall be entered in favor of Respondent and against Petitioner.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: February 6, 2019



WALTER H. RICE
UNITED STATES DISTRICT JUDGE